THE HON'BLE SRI JUSTICE SANJAY KUMAR
AND
THE HON'BLE SRI JUSTICE M. GANGA RAO

WRIT PETITION No.17670 OF 2015

ORDER
(*per* Hon'ble Sri Justice Sanjay Kumar)

The State of Telangana and its officials filed this writ petition aggrieved by the order dated 18.03.2013 passed by the Andhra Pradesh Administrative Tribunal, Hyderabad (*hereinafter*, 'the Tribunal'), in O.A.No.8525 of 2010. The said O.A. was filed by the first respondent herein assailing the Memo dated 25.03.2010 issued by the Principal Secretary to Government, Higher Education (VC.I) Department, Government of Andhra Pradesh, calling upon the Commissioner of Collegiate Education, Hyderabad, to treat his unauthorized absence from 23.06.1996 to 27.05.2002 as *dies-non* under Fundamental Rule 18 and Rule 5-A of the A.P. Leave Rules, 1933 (*for brevity*, 'the Rules of 1933'), and settle his pension accordingly. He also challenged the consequential proceedings dated 11.05.2010 and 13.10.2010 of the Commissioner of Collegiate Education, Andhra Pradesh, Hyderabad, giving effect to the said Memo. He sought a direction to the authorities to treat the period 23.06.1996 to 27.05.2002 as on duty for the purpose of pension and pay fixation and to release his pensionary benefits, such as gratuity, full pension, commuted value of pension etc., as admissible under the rules.

By the order under challenge, the Tribunal took note of the fact that the first respondent-applicant was never subjected to disciplinary proceedings in relation to his alleged unauthorized absence and observed that as he was allowed to retire without being subjected to departmental proceedings, no order could have been passed treating the said period as *dies-non*. The Tribunal also adverted to the fact that the authorities had

treated the period from 23.06.1996 to 27.05.2002 as *dies-non* without noticing that the first respondent-applicant was paid salary upto 24.06.1996 and opined that this, in itself, indicated the level of non-application of mind by the authorities. The Tribunal accordingly allowed the O.A. directing the authorities to treat the period from 10.06.1995 to 25.04.1996 and the period from 18.06.2002 to 20.06.2003 in addition to the period from 23.06.1996 to 27.05.2002, which was referred to in the impugned proceedings, as compulsory wait for posting, without salary and allowances attached to the post, for the purpose of payment of retiral benefits, including pension, gratuity, commutation etc.

By order dated 25.06.2015, this Court granted interim suspension of the order under challenge. W.V.M.P.No.1003 of 2017 was filed by the first respondent-applicant to vacate the said order. Comprehensive arguments having been advanced by the learned Government Pleader for Services, State of Telangana, the successor-in-interest of the State of Andhra Pradesh in so far as this case is concerned, and Sri K.S.V.Subba Rao, learned counsel for the first respondent-applicant, the matter is amenable to final disposal at this stage.

The first respondent-applicant was appointed as a Junior Assistant in Medak District and was thereafter promoted as a Senior Assistant on 21.07.1986. He was transferred at his own request to Ranga Reddy District on 11.06.1987. He was repatriated to Medak District under proceedings dated 05.06.1995 of the Regional Joint Director of Higher Education, Warangal. Aggrieved thereby, he filed O.A.No.2905 of 1995. Interim orders were passed therein staying the operation of the proceedings dated 05.06.1995 in so far as his repatriation was concerned. However, he was not allowed to report for duty in Ranga Reddy District

where he was working at that point of time. The O.A. was dismissed on 07.12.1995, observing that the post of Senior Assistant was a zonal post and therefore, repatriation to Medak District could not be said to be illegal. After the dismissal of the O.A., proceedings dated 24.03.1996 were issued by the Regional Joint Director of Higher Education, Warangal, posting him at the Government Junior College, Zaheerabad, Medak District. The first respondent-applicant reported for duty on 26.04.1996 but, after summer vacation, the Principal of the College did not permit him to report for duty. He thereupon filed O.A.No.2423 of 1996 before the Tribunal seeking a direction to the authorities to permit him to join duty as a Senior Assistant at Zaheerabad. By order dated 13.11.1996, the Tribunal directed the authorities to pay him salary from 26.04.1996 and to pass appropriate orders within four weeks. He again filed O.A.No.4892 of 2000 before the Tribunal seeking a direction to the authorities to continue him in service at Zaheerabad. Pursuant to the orders passed by the Tribunal on 06.09.2000, he reported for duty before the Principal, Government Junior College, Zaheerabad, on 11.09.2000. He was however not permitted to join duty. By order dated 21.12.2001 passed in O.A.No.4892 of 2000, the Tribunal directed the Regional Joint Director, Warangal, to issue posting orders to him within a time frame. He was finally given orders on 13.05.2002 posting him at the Government Junior College, Kangti, Medak District, and he reported for duty on 28.05.2002.

In the meanwhile, W.P.No.10986 of 2002 filed by the first respondent-applicant against the order in O.A.No.4892 of 2000 was disposed of by this Court *vide* order dated 19.08.2002. This Court held that the post of Senior Assistant was not a zonal post but a district cadre post. This Court further held that the transfer of the first respondent-

applicant from Medak to Ranga Reddy District in the first instance did not suffer from any illegality. As the said order was not given effect to, he filed C.C.No.1551 of 2002. It was only thereafter that the Regional Joint Director issued proceedings dated 11.06.2003 posting him at the Government Junior College, Malkajgiri, Ranga Reddy District. The Special Leave Petition filed by the authorities against the order in W.P.No.10986 of 2002 was dismissed by the Supreme Court on 25.11.2004.

Thereafter, the Government issued Memo dated 02.02.2006 instructing the Commissioner of Intermediate Education, Andhra Pradesh, to take disciplinary action against the first respondent-applicant as per rules. Aggrieved thereby, he filed O.A.No.5875 of 2006 before the Tribunal. His complaint therein was that owing to the said Memo, his case was not being considered for promotion to the post of Superintendent on par with his juniors. He also sought a direction therein to the authorities to treat the periods 10.06.1995 to 25.04.1996, 25.06.1996 to 27.05.2002 and 18.06.2002 to 20.06.2003 as periods spent on duty as he was kept out of office by the authorities without posting orders. He was thereafter promoted as a Superintendent pursuant to the interim orders granted in the O.A. and the contempt proceedings initiated in relation thereto.

The first respondent-applicant retired from service on 30.09.2006 upon attaining the age of superannuation. As his terminal benefits were withheld by the authorities, he filed M.A.No.2041 of 2009 in O.A.No.5875 of 2006. By order dated 19.06.2009 passed therein, the Tribunal directed the authorities to release his provisional pension within a time frame. He was again constrained to move contempt proceedings in C.A.No.949 of 2009 in O.A.No.5875 of 2006 owing to the failure of the authorities to do so. It was at this stage that the Government issued the impugned Memo

dated 25.03.2010 directing the Commissioner of Collegiate Education, Andhra Pradesh, to treat the period from 23.06.1996 to 27.05.2002 as *dies-non*. Giving effect to the said Memo, the Commissioner issued proceedings dated 11.05.2010 treating the said period as *dies-non* and called upon the Principal, Government Junior College, Malkajgiri, Ranga Reddy District, *vide* proceedings dated 13.10.2010, to submit pension proposals accordingly. Aggrieved thereby, the first respondent-applicant filed the subject O.A.

The aforestated facts clearly demonstrate that the first respondent-applicant was never subjected to departmental proceedings in relation to any unauthorized absence. Even after his retirement on 30.09.2006, if the authorities wished to do so, they could have taken recourse to Rule 9(2)(b) of the Andhra Pradesh Revised Pension Rules, 1980, had they chosen to, within the time stipulated therein. Having failed to do so, it is too late in the day for the authorities to now pass a penal order against the first respondent-applicant.

Further, as rightly pointed out by the Tribunal, liberty had been given to the authorities to proceed against the first respondent-applicant in the context of his alleged unauthorized absence and pursuant thereto, the Memo dated 02.02.2006 was issued instructing the Commissioner of Intermediate Education, Andhra Pradesh, to initiate disciplinary action as per rules. Instructions were accordingly given by the Commissioner of Intermediate Education to the Regional Joint Director, Warangal, the competent authority, to initiate action against the first respondent-applicant. However, no steps were taken in that regard and straightaway, the impugned Memo dated 25.03.2010 was issued by the Government directing treatment of the period from 23.06.1996 to 27.05.2002 as *dies-*

non under Fundamental Rule 18. Note 4 appended to Fundamental Rule 18 provides that in all cases of unauthorized absence of duty for a continuous period exceeding one year, the penalty of removal from service shall be imposed on the Government employee, after duly following the procedure laid down in the Andhra Pradesh Civil Services (Classification, Control and Appeal) Rules, 1991 (*for brevity*, 'the Rules of 1991').

The impugned Memo dated 25.03.2010 also mentions Rule 5-A of the Rules of 1933. Note 4 appended to this Rule states that in all cases of unauthorized absence to duty for a continuous period exceeding one year, the penalty of removal from service shall be imposed on the Government servant after duly following the procedure laid down in the Rules of 1991.

Therefore, Fundamental Rule 18 and Rule 5-A of the Rules of 1933 are on identical lines. Both speak of initiation of disciplinary proceedings under the Rules of 1991. However, no such procedure was adopted in the case of first respondent-applicant, if the authorities were of the opinion that he was guilty of unauthorized absence exceeding one year.

It is an admitted fact that though he reported for duty at Zaheerabad after being posted there in 1996, the Principal of the College did not permit him to join after summer vacation. He was however paid salary from 26.04.1996 to 24.06.1996 *vide* proceedings dated 16.06.1999, pursuant to the orders passed by the Tribunal. As long back as in the year 2001, the Tribunal gave liberty to the authorities to initiate disciplinary proceedings against the first respondent-applicant. A similar observation was made by a Division Bench of this Court thereafter. Having issued Memo dated 02.02.2006 long thereafter, in that regard, the authorities failed to take steps to initiate disciplinary proceedings under the Rules of

1991. The first respondent-applicant was allowed to retire from service without any issue being raised.

In the absence of any departmental proceedings, the authorities could not pass an order which visited a punishment upon the first respondent-applicant long after his retirement from service. The impugned Memo dated 25.03.2010 does so, as it directs treatment of the period from 23.06.1996 to 27.05.2002 as *dies-non* for the purpose of reckoning his pension and pensionary benefits. Imposition of such a penalty without due procedure cannot be countenanced. The Tribunal rightly interfered in the matter and set aside the impugned Memo along with the consequential proceedings. The relief granted to the first respondent-applicant, without financial implications in terms of arrears of salary and allowances, is therefore valid and justified. The benefit of this past service is only to be taken into account for the purpose of retirement benefits which cannot be said to be unjustified. Given the facts and circumstances of the case, this Court finds no grounds to interfere with the well-reasoned order passed by the Tribunal.

The writ petition is devoid of merit and is accordingly dismissed. Interim order dated 25.06.2015 shall stand vacated. Pending miscellaneous petitions, if any, shall also stand dismissed. No order as to costs.

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SANJAY KUMAR,J

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M.GANGA RAO,J

8th JUNE, 2018
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